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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 891

RUTH E. LAYTON, FARMERS UNION, AND LAYTON SUGAR COMPANY, A CORPORATION,

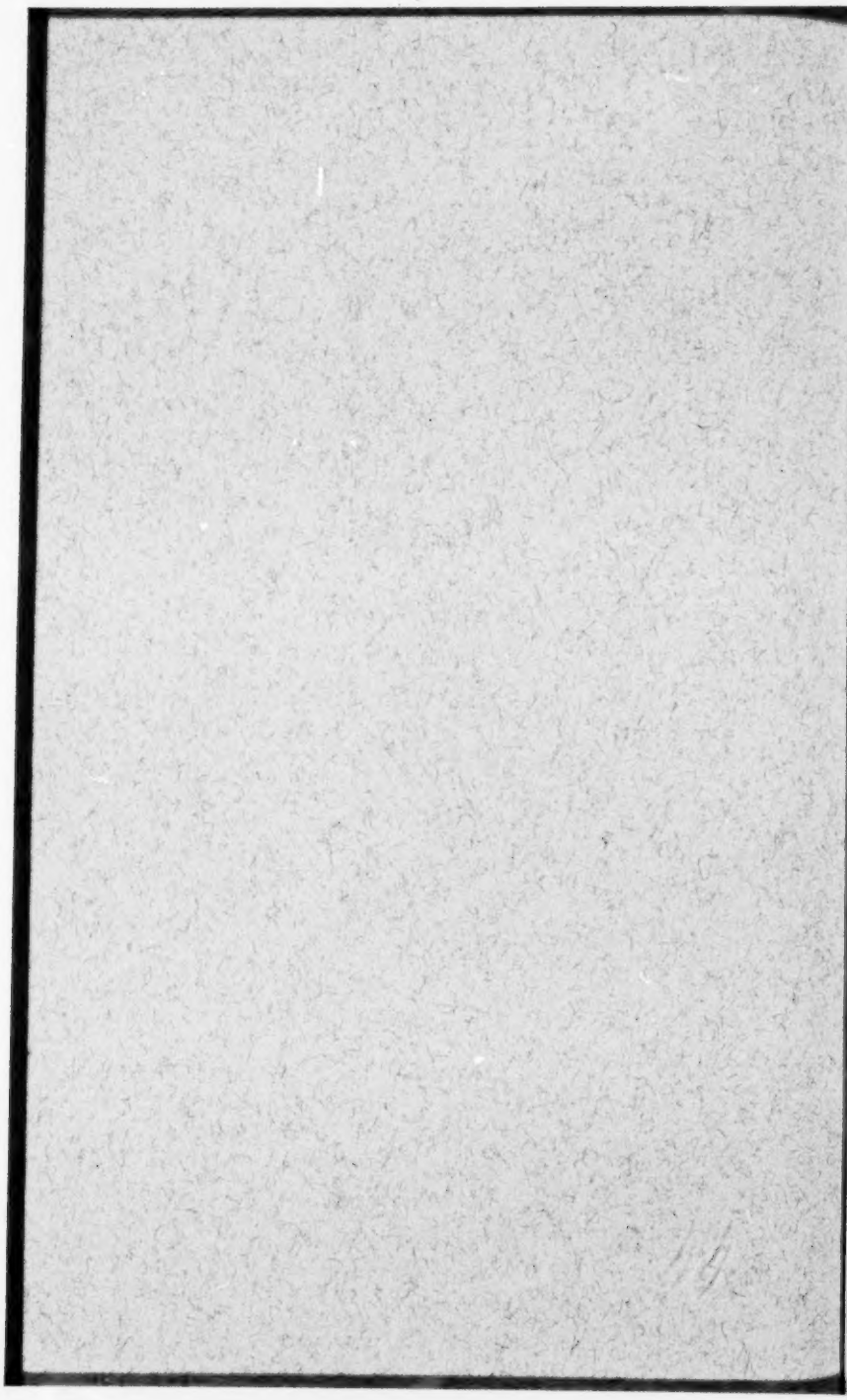
Petitioners,

vs.

WILLIAM J. THAYNE, DAVIS COUNTY BANK, WALTER WRIGHT, MORRISON-MERRILL AND COMPANY, PRESTON PARKINSON AND COT HEADLUND, DOING BUSINESS AS RUDY AND HEADLUND, AND CLIFTON B. LAYTON, DEBTOR.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT AND SUPPORTING BRIEF.

J. D. SKEEN,
E. J. SKEEN,
Counsel for Petitioners.



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PETITION FOR WRIT OF CERTIORARI.

The petition of Ruth E. Layton, Farmers Union, and Layton Sugar Company, a corporation, respectfully shows to the Court:

That petitioners are creditors of Clifton B. Layton, debtor. That on the 19th day of April, 1933, the said Clifton B. Layton filed a petition in the United States District Court for the District of Utah after approval, praying for relief under Section 75 of the Bankruptcy Act. There was attached to the said petition schedule "A", showing four creditors with secured claims aggregating $18273.00 and

eleven creditors having unsecured claims aggregating $7720.00; and schedule "B" showing two tracts of land of 31½ acres and 27½ acres, respectively.

On the 22nd day of April, 1935, the said debtor filed a petition for relief under Section 75 (s) of the said act, and on the 23rd day of April, 1935, he was adjudicated a bankrupt and said matter referred to a referee in bankruptcy. The proceeding under Section 75 (s) was dismissed because of the statute being held unconstitutional.

On December 16, 1935, the debtor executed and delivered to the Davis County Bank of Davis County, Utah, a mortgage covering a part of the land scheduled, to secure payment of a note for $5000. On December 27, 1935, the debtor executed and delivered to the Utah Rural Rehabilitation Corporation a mortgage for the sum of $3600, covering the same land to secure payment of a note for the same amount. On February 25, 1936, the debtor executed and delivered to William J. Thayne, a note for $2470, and a mortgage covering the same land, to secure payment of a note for a like amount. On November 13, 1936, a judgment was entered against the debtor in the sum of $360, and on February 1, 1937 suit was instituted in the District Court for Davis County, Utah, against the debtor by William J. Thayne to foreclose the mortgage given February 25, 1936. On February 15, 1937, the debtor conveyed the land to his wife.

On July 14, 1937, a petition was filed in the Federal District Court by William J. Thayne, for leave to continue the prosecution of a suit against the debtor filed February 1, 1937. No notice of hearing upon the petition was given, and on the 31st day of July, 1937, a minute entry was made authorizing the prosecution of the suit. On January 20, 1939, the sheriff of Davis County issued a certificate of sale of debtor's real estate under decree of foreclosure entered in the Thayne suit, and on April 2, 1940, a sheriff's deed

was issued to William J. Thayne upon the certificate of sale.

On the 1st day of December, 1938, a petition was filed by Thayne reciting the filing of the petition for relief under Section 75 of the Bankruptcy Act, the entry of an order authorizing Thayne to proceed with the foreclosure suit, the entry of a decree of foreclosure, that the debtor was not a farmer, that no offer of composition and extension was made, and that the proceeding was for the purpose of delaying creditors, and praying for an order dismissing the proceeding filed for relief under Section 75. No notice of hearing of the petition was given to creditors. An order was issued and served upon the debtor alone, requiring him to show cause why the proceeding should not be dismissed.

On December 10, 1938, the debtor, Thayne, and one creditor appeared by their attorneys and it was thereupon ordered "that the case be and was hereby dismissed."

On January 11, 1940, the Utah Wool Marketing Association, successor in interest of an unsecured creditor, having a claim of $2200, filed a petition for an order setting aside the order of dismissal and reinstating the proceeding, and on January 27, 1940, the petitioners herein filed a petition for an order requiring all persons having dealings with the debtor, after the filing of the petition, April 19, 1933, and all persons receiving money, property, notes, mortgages, or evidence of indebtedness, or asserting claims or liens upon the property of the debtor to appear and show cause why the court should not make an order setting aside the order of dismissal dated December 10, 1938, setting aside and annulling the notes and mortgages and other liens given by the debtor, and making such other and further orders as the court should deem proper in the further administration of the proceedings under the provisions of Section 75 of the Bankruptcy Act. Notice was given, a hearing was had, and thereupon the District Court made findings reciting the filing of the petition for relief under Section 75 of the Bank-

ruptcy Act, the filing of a petition for adjudication under subsection (s) of the Bankruptcy Act, the fact that the said petition under subsection (s) was dismissed because of the judgment of this Court declaring subsection (s) unconstitutional, the conveyance by the debtor of his property to his wife; "that during the year 1935 and at all times since said date the said debtor, Clifton B. Layton, was not primarily bona fide personally engaged in producing products of the soil". That the Conciliation Commissioner, during the years 1935 and 1936 in conjunction with the debtor, purportedly acting under Section 75, made various compositions and compromises with certain of his lien creditors, that the Conciliation Commissioner on the 26th day of February, 1937, made his report to the court recommending the dismissal of the proceedings and that the proceedings were dismissed on December 10, 1938. "That the debtor at no time since April 19, 1933 ever complied with the requirements of Section 75 so far as to entitle him to file under subsection (s) or that at no time did he ever effect a composition with his creditors and that he declined in open court to join in the prayer to vacate and set aside the order of dismissal." The court concluded that the petitioners were not entitled to have the order of dismissal vacated or set aside and that their petition should be dismissed and entered judgment of dismissal.

An appeal was taken to the United States Circuit Court of Appeals for the Tenth Circuit, in which court the following assignments were made:

> "1. That the court was without jurisdiction to make and enter an order of dismissal of the above entitled proceeding on December 10, 1938 for the reason that appellants had no notice of the hearing upon the said motion to dismiss.
>
> 2. That the court erred in concluding and adjudging that appellants were not entitled to have said proceed-

ing reinstated and the property of the said debtor held subject to the sole jurisdiction and control of the court of bankruptcy and subject to the payment of debtors' creditors including appellants as provided for in Section 75 of the Bankruptcy Act.

3. That the court erred in holding that the petitioners by their long delay in filing their petitions had been guilty of laches.

4. That the court erred in making and entering an order on December 10, 1938, purporting to dismiss said proceedings without the giving of notice as required by Section 58 and 59 of the Bankruptcy Act and that the order of December 10, 1938 having been made without notice to creditors including these appellants was ineffective in terminating the jurisdiction of the court over the property of the debtor and void by reason of which the court erred in denying appellants relief under their petitions for the reinstatement of said proceeding and the administration of the property of the debtor in the Bankruptcy court as required by law."

said matter was argued and submitted and on the 27th day of December, 1940. The Circuit Court of Appeals handed down an opinion holding that the original proceeding was dismissed and the jurisdiction over the debtor terminated when subsection (s) was declared unconstitutional. The opinion of the court is published in 116 F. (2d) No. 3, page 769.

The following questions are presented by this petition:

I.

Did the jurisdiction of the District Court over the debtor and his property terminate as to creditors, by the filing of a petition for adjudication in Bankruptcy under the provisions of the void subsection (s) of Section 75 of the Bankruptcy Act.

II.

After a proceeding is initiated under Section 75 and the exclusive jurisdiction of the Federal court attaches to the debtor and his property, have creditors a right to have the proceeding continued for the protection and preservation of the property of the debtor to the extent, as least of preventing the debtor from creating liens upon his scheduled property for the benefit of favored creditors or conveying or otherwise disposing of the property to the prejudice of other creditors.

III.

Does Section 75, subsection (p), reading:

> "All such property shall be under the sole jurisdiction and control of the court in bankruptcy and subject to the payment of the debtor farmer's creditors as provided for in Section 75 of this Act."

mean that the jurisdiction of the court, regardless of the conduct of the debtor, continues for the protection of the creditors and the administration of the property until the proceeding is dismissed in the manner provided for the dismissal of proceedings in voluntary or involuntary Bankruptcy under Section 58 (a-7) and 59 (g) of the General Bankruptcy Law.

IV.

Did the District Court, in continuing to exercise jurisdiction over the debtor and his property, after the dismissal of the proceeding initiated under the void subsection (s) of Section 75, even though erroneous, create a situation prejudicial to creditors, which could be remedied by the District Court alone by orders cancelling the conveyance from the debtor to his wife and removing mortgage liens upon the property given while the jurisdiction of the court over the

debtor and his property was being asserted under the provisions of Section 75 of the Bankruptcy Act.

The writ of certiorari should be granted for the following reasons:

1. That the judgment of the Circuit Court of Appeals disregards the fundamental right of creditors to have the property subject to the exclusive jurisdiction of the District Court, preserved for the benefit of all creditors and ultimately distributed in accordance with their rights and with the preferences created before or after the jurisdiction of the court attached eliminated.

2. That the District Court and the Circuit Court of Appeals have failed to give any force or effect, whatsoever, to Section 75, subdivision (p) of the Act, reading:

> "All such property shall be under the sole jurisdiction and control of the court in bankruptcy, and subject to the payment of the debtor farmer's creditors, as provided for in section 75 of this Act."

The lower courts have wholly disregarded Section 75 (n), reading:

> "* * * In proceedings under this section, except as otherwise provided herein, the jurisdiction and powers of the courts, the title, powers, and duties of its officers, the duties of the farmer, and the rights and liabilities of creditors and of all persons with respect to the property of the farmer and the jurisdiction of the appellate courts, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the farmer's petition, asking to be adjudged a bankrupt, was filed with the clerk of court or left with the conciliation commissioner for the purpose of forwarding same to the clerk of court."

And Section 58 (a-7) and 58 (g) of the General Bankruptcy Act, reading:

> Section 58 (a-7): "Creditors shall have at least ten days' notice by mail, to their respective addresses as they appear in the list of creditors of the bankrupt or as afterward filed with the papers in the case by the creditors of (7) the proposed dismissal of the proceedings, in cases where notice is required by subdivision g of section 59 of this Act."
>
> Section 59 (g): "A voluntary or involuntary petition shall not be dismissed upon the application of the petitioner or petitioners, or for want of prosecution, or by consent of parties, until after notice to the creditors as provided in section 58 of this Act."

3. The recognition of the rights of creditors in proceedings under Section 75 is the utmost general importance and such rights can be safeguarded and protected only by the correction of the erroneous rulings and judgments of the lower courts.

4. Because the judgment of the Circuit Court of Appeals is contrary to the letter and spirit of the statute as interpreted in:

John Hancock Mutual Life Insurance Co. v. *Bartels,* 308 U. S. 180, 84 L. Ed. 176;

Wright v. *Mountain Trust Bank,* 300 U. S. 440, 81 L. Ed. 736.

WHEREFORE, petitioners pray that the writ of certiorari to the Circuit Court of Appeals of the Tenth Circuit issue herein.

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Attorneys for Petitioners.

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SUPPORTING BRIEF ON QUESTIONS OF THE JURISDICTION OF THE SUPREME COURT TO ISSUE WRIT OF CERTIORARI.

This Court is authorized to grant the writ of certiorari by the express provisions of section 347 of the Judicial Code, reading:

> "In any case, civil or criminal, in a circuit Court of appeals, or in the Court of Appeals of the District of Columbia, it shall be competent for the Supreme Court of the United States, upon the petition of any party thereto, whether government or other litigant, to re-

> quire by certiorari, either before or after a judgment or decree by such lower court, that the cause be certified to the Supreme Court for determination by it with the same power and authority, and with like effect, as if the cause had been brought there by unrestricted writ of error or appeal."

The petitioners (creditors of the debtor) asserts a right to pursue proceedings under a Federal Statute and that right has been denied.

The right of creditors to have the property of the debtor held subject to the exclusive jurisdiction of the Federal District Court is given by Section 75 (p) of the Bankruptcy Act, which reads:

> "All such property shall be under the sole jurisdiction and control of the court in bankruptcy, and subject to the payment of the debtor farmer's creditors, as provided for in section 75 of this Act."

The petitioning creditors have been denied the fundamental right to have the property of the debtor, which became subject to the exclusive jurisdiction of the court, preserved and kept free from liens, while so held by the court, and the further right to have the conveyance and the mortgages given while the property was subject to the jurisdiction of the court, removed before the surrender of the jurisdiction of the court over the debtor and his property by the dismissal of the proceeding. In order that the petitioning creditors might have their day in court to assert their rights before the dismissal of the proceeding, they were entitled under the express provisions of the statute and under the constitution, to notice of proposed dismissal of the proceeding.

So far as known, the specific question as to the rights of creditors under Section 75 of the Bankruptcy Act, has not been before this Court. *Bernards* v. *Johnson,* Ninth Cir-

cuit Court of Appeals, 103 F. (2d) 567, now before this Court, does not appear to support the judgment of the Circuit Court of Appeals for the reason that the rights of creditors to have the proceeding continued for the preservation of the property and for the orderly administration of the same, was not before the court. The debtor alone was concerned with the reinstatement of the proceedings.

This Court has repeatedly granted certiorari in cases involving Section 75 of the Bankruptcy Act:

Kalb v. *Feuerstein,* 308 U. S. 433, 84 L. Ed. 370;

John Hancock Mutual Life Insurance Co. v. *Bartels,* 308 U. S. 180, 84 L. Ed. 176;

Union Joint Stock Land Bank v. *Byerly,* 310 U. S. 1-16, 84 L. Ed. 1041;

Borchard v. *California Bank & Trust Company,* 310 U. S. 311, 84 L. Ed. 1022;

Wright v. *Union Central Life Insurance Co.,* —— U. S. ——, 85 L. Ed. 166.

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